county and municipal buildings and the adornment of streets and parks, cannot thus be controlled by the state.[7] The weakness, therefore, of the New York and the Indiana statutes is the breadth of language which includes both sorts of municipal works, local as well as public. A second weakness is that they apply to contracts let before the statute was enacted. In these two particulars, the statutes *prima facie* restrict freedom of contract and impair contract rights; and the courts seem right in holding this interference unjustified by public exigency and therefore unconstitutional.[8] There appears to be no reason why such restrictive provisions should not be constitutional if only they are sufficiently limited by the legislature in the enacting statute.

THE DOCTRINE OF RESPONDEAT SUPERIOR. — It is a fundamental principle of agency that the master is responsible for injuries to third persons caused by the negligence of his servants in the course of their employment. Although this doctrine of *respondeat superior* is well settled, yet it is often difficult to determine when the relation of master and servant exists. It is undoubtedly good law that where the servant of one party is placed merely under the general supervision of another, the relation of master and servant is not established between them.[1] Nor is the original employer absolved from liability.[2] If, on the other hand, control as to details is delegated and exercised, the liability is transferred from the employer to the person exercising such control.[3]

A recent New York case suggests that there may be a third class of cases between the two above. The trains of the Lehigh Company were operating over the tracks of the Erie Railroad Company under a contract which provided that such trains should be subject to the exclusive control of the Erie Company. The plaintiff, while crossing an Erie track on the highway, was injured through the negligent management of a Lehigh train. The court held the Erie Company liable, basing its decision on the doctrine of *respondeat superior*. *Decker* v. *Erie R. R. Co.*, 85 N. Y. App. Div. 13. The decisions in a few similar cases would seem to support this conclusion.[4] It should be observed that while the Lehigh trains were, by the contract, subject to the exclusive control of the Erie Company even as to details, nothing appears to show that the latter was actually exercising that control when the injury occurred. It is submitted that in order to fasten the liability upon the Erie Company, it should not only have had the right to control the employees of the Lehigh Company, but should also have been in the actual exercise of that right. In no true sense could the crew of the Lehigh train be said to be the servants of the Erie Company. They were employed by the Lehigh Company, were acting for its benefit and in accordance with its orders. Only by the intervention of orders from the Erie Company, would they become the servants of the latter for the purposes of liability. If this argument be sound, it would follow that the decision is an unfortunate one.

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[7] Dillon, Munic. Corp. § 71.
[8] See also Cleveland *v.* Clements Bros. Constr. Co., 65 N. E. Rep. 885 (Ohio).

[1] Langher *v.* Pointer, 5 B. & C. 547.
[2] Coggin *v.* Central R. R. Co., 62 Ga. 685.
[3] Brown *v.* Smith, 86 Ga. 274.
[4] Atwood *v.* Chicago, R. I. & P. R. Co., 72 Fed. Rep. 447.

It is thought unfortunate also for another reason, — one which is an objection to all cases in which the doctrine of *respondeat superior* is applied to a person in control of a servant employed by another. The employee's only direct duty of obedience is by virtue of his contract with his employer, and it would seem, therefore, that he owes that duty to his employer alone. It is difficult, consequently, to understand how he can be in fact the servant of a third person to whom he owes no direct duty;[5] yet, if the relation of master and servant be not established, it is admittedly impossible to apply the doctrine of *respondeat superior*. This difficulty seems, however, to have been overlooked in the decided cases.

EQUITABLE ASSIGNMENT OF CHOSES IN ACTION. — Few legal expressions seem more loosely defined and inexactly employed than the phrase "equitable assignment" in cases where parties are dealing with choses in action. This inaccurate use of the term is probably due to the fact that the word "equitable" indicates the nature of a remedy rather than the form of an assignment. Whenever a court of equity protects an assignee the assignment is equitable. It has been easy, then, to lay stress on the remedy rather than the transaction which gave rise to it, and the nature of that transaction is often quite overlooked by the courts. From the decisions it is not always easy to see just what sort of transaction equity will enforce as an assignment.

Some of the cases are plain. For example, where the consignor of goods directed the consignee to pay a portion of the proceeds of the sale to a creditor of the consignor, this creditor prevailed against the consignor's trustee in bankruptcy, though the last named by telegram countermanded the direction before it was received by the consignee. *Alexander* v. *Steinhardt, Walker & Co.*, [1903] 2 K. B. 208. This was a clear case of equitable assignment, if the court was justified in finding from the course of business that the creditor accepted in satisfaction of his debt a part of the consignor's claim. In that case the intention of the parties to assign that claim was clear, and it is the intention of the parties that equity in all these cases rightly attempts to enforce. Since the assignment here was of a part of the claim only, the creditor acquired no rights at all at law, not even a power of attorney. His only remedy was in equity.[1]

Not all the cases, however, are so simple. Where a contractor maintained a special fund for the payment of wages, and a bank other than the depositary advanced on checks drawn upon that fund money to be used in the payment of wages, the bank prevailed against the contractor's trustee in bankruptcy, though the checks had not been presented for payment. *Fortier* v. *Delgado & Co.*, 122 Fed. Rep. 604 (C. C. A., Fifth Circ.). The court said the *checks* were an equitable assignment. But checks on a general fund are never treated as assignments.[2] Yet in both cases the character of the checks, as checks, is the same. They are mere revocable orders on which the payee acquires before acceptance no rights against the drawee either at law or equity. But in this case, as in every other, the real question was to find the intent of the parties, for it is this which equity enforces. And the intention to assign could be found here,

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[5] See 12 Am. L. Rev. 69.

[1] Getchell *v.* Maney, 69 Me. 442.

[2] Hall *v.* Flanders, 83 Me. 242.